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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re R.J., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.J.,

Defendant and Appellant.

A159533

(Solano County
Super. Ct. No.

J44813)

MEMORANDUM OPINION¹

This juvenile proceeding was commenced in Alameda County juvenile court. The day the wardship petition was filed, the minor admitted to a lesser included offense (attempted second degree robbery). The court, on the prosecutor's motion, then dismissed an allegation the minor had used a firearm and transferred the case to San Francisco for disposition.

The San Francisco juvenile court adopted the Probation Department's recommendation that the minor be placed on probation, released the minor to his father, and transferred the case to Solano County.

¹ This appeal is appropriately resolved by memorandum opinion in accordance with California Standards of Judicial Administration, section 8.1.

Prior to the first status conference in the Solano juvenile court, the probation officer filed an addendum report which attached a form enumerating terms and conditions of probation, several of which had not been imposed by the San Francisco court. The court imposed the additional conditions checked by the probation officer, as well as orally imposing a condition prohibiting the minor from owning a firearm until the age of 30.

The minor challenges the additional conditions on the ground he was not given notice thereof, in violation of Welfare and Institutions Code section 776. He challenges the firearm prohibition on the additional ground that the juvenile court erred in believing this condition was required under subdivision (b) of Penal Code section 29820. We conclude the minor forfeited the notice issue because, in the juvenile court, he failed to object to the conditions on lack of notice grounds. However, we agree with the minor on the second point and will direct the firearm prohibition be stricken.

After disposition, the juvenile court retains authority to change, modify, or set aside a probation order. Welfare and Institutions Code section 775 provides: “Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article.”

Welfare and Institutions Code section 776 addresses the procedural requirements to change, modify, or set aside the juvenile court’s order. Welfare and Institutions Code section 776 states: “No order changing, modifying, or setting aside a previous order of the juvenile court shall be made either in chambers, or otherwise, *unless prior notice* of the application therefor has been given by the judge or the clerk of the court to the probation officer and prosecuting attorney and to the minor’s counsel of record, or, if

there is no counsel of record, to the minor and his [or her] parent or guardian.” (Italics added.)

The Attorney General maintains the minor has forfeited his first complaint—that he was not given notice as required by Welfare and Institutions Code section 776—because he did not raise this objection in the juvenile court. We agree. The minor was notified of the transfer-in hearing. He received a copy of the Probation Officer’s addendum report with the attached form enumerating the terms and conditions of probation, several of which had not been imposed by the San Francisco court. He participated in the hearing. And he objected to the gun ownership prohibition on substantive, but not procedural, grounds. Therefore, his contention regarding lack of adequate notice is forfeited. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 889 [probationers in delinquency proceedings subject to forfeiture rule]; *In re Wilford J.* (2005) 131 Cal.App.4th 742, 754 [notice error in dependency proceeding forfeited where party had opportunity to bring the issue to the juvenile court’s attention but did not raise it, thereby depriving court of the opportunity to correct the asserted mistake].)

Minor claims that by pointing out to the Solano juvenile court that the San Francisco court had handled disposition, he sufficiently preserved the issue of notice. This is not a fair reading of the record—there is no indication the prosecutor or the juvenile court understood the minor to be objecting on the ground he had not received adequate notice of the recommended conditions of his probation. He also points out that as the court was orally reciting the terms and conditions of probation and read the gun prohibition condition, his attorney stated that the “box” on the terms and conditions form “isn’t checked.” The court responded, “Well, I believe that this dispo would prevent him from doing that legally even if I don’t order it.” Counsel said

nothing further. By all appearances, counsel appeared satisfied with the court's explanation. Accordingly, this brief colloquy does not suffice as an objection on notice grounds.

As to the minor's substantive challenge to the firearm prohibition, the Attorney General maintains the juvenile court correctly understood it to be mandated by statute, pointing to the following statutory provisions:

Penal Code section 29820, which provides in pertinent part:

“(a) This section applies to any person who satisfies both of the following requirements:

“(1) The person is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in Section 29805, or any offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.

“(2) The person is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in Section 29805, or any offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.

“(b) Any person described in subdivision (a) shall not own, or have in possession or under custody or control, any firearm until the age of 30 years.” (Pen. Code, § 29820, subs. (a)(1)–(2), (b).)

Welfare and Institutions Code section 707, subdivision (b), which provides in pertinent part:

“(b) This subdivision is applicable to any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses:

[¶] . . . [¶]

“(3) Robbery.

[¶] . . . [¶]

“(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.” (Welf. & Inst. Code, § 707, subd. (b)(3) & (17).)

And Penal Code section 12022.53, subdivision (a), which lists in pertinent part:

“(4) Section 211 (robbery)

[¶] . . . [¶]

“(18) Any attempt to commit a crime listed in this subdivision other than an assault.” (Pen. Code, § 12022.53, subd. (a)(4) & (18).)

The Attorney General asserts that under the plain language of these provisions, the minor was alleged to have committed a Welfare and Institutions Code section 707, subdivision (b) offense, namely robbery (Welf. & Inst. Code, § 707, subd. (b)(3)), and was adjudicated a ward due to a Welfare and Institutions Code section 707, subdivision (b) offense, namely attempted robbery (Welf. & Inst. Code, § 707, subd. (b)(17) & Pen. Code, § 12022.53, subd. (a)(4) & (18)).

However, despite the plain language of subdivision (a)(18) of Penal Code section 12022.53—which includes any “attempt” of the other listed crimes, which include “robbery”—the courts have long held that for purposes of Welfare and Institutions Code section 707, subdivision (b), subdivision (a)(18) only applies where a wardship petition has alleged personal use of a firearm *and* the minor has admitted or the juvenile court has found true this allegation. In short, an adorned attempted robbery adjudication is *not* a Welfare and Institutions Code section 707, subdivision (b) offense.

In *In re Greg F.* (2012) 55 Cal.4th 393, for example, the Supreme Court described the circumstances in *In re J.L.* (2008) 168 Cal.App.4th 43 as follows:

“... J.L. committed a series of offenses that were adjudicated at various times under [Welfare and Institutions Code section] 602 petitions and 777 notices. In May 2006, he admitted committing felony theft, unauthorized use of a vehicle, and assault, as alleged in [Welfare and Institutions Code section] 602 petitions from January and March 2006. (*J.L.*, at p. 49.) In December of the same year, another 602 petition was filed alleging attempted second degree robbery with personal use of a knife. (*J.L.*, at p. 50.) The minor admitted these allegations but was later granted permission to withdraw his admission to the weapon enhancement. (*Id.* at pp. 50–51.) *Without the enhancement, the attempted robbery offense was not DJF eligible under [Welfare and Institutions Code] section 733(c).* Recognizing this problem, at the dispositional hearing the juvenile court dismissed the December 602 petition and ordered J.L. committed to DJF on the March 2006 petition. (*J.L.*, at pp. 52–54.) J.L. challenged this order on appeal, arguing [Welfare and Institutions Code] section 733(c) precluded his commitment to DJF because his most recent offense admitted and found true was the attempted robbery alleged in the December 2006 petition. (*J.L.*, at p. 56.) Without analyzing the apparent conflict in the statutes, the Court of Appeal upheld the dispositional order because the juvenile court had dismissed the December 2006 petition under [Welfare and Institutions Code] section 782, thus making the DJF-eligible offense alleged in the March 2006 petition the ‘most recent’ offense for purposes of [Welfare and Institutions Code] section 733(c). (*J.L.*, at pp. 56–57.)” (*In re Greg F.*, *supra*, 55 Cal.4th at p. 414, italics added.)

The high court went on to agree that the *J.L.* court had correctly concluded the juvenile court, in the context of a probation violation, has the power to dismiss what would otherwise have been the “most recent” petition and deem it a notice of violation of probation, thereby enabling the court to order placement in DJF (now DJJ). (*In re Greg F.*, *supra*, 55 Cal.4th at p. 400.)

We therefore conclude the juvenile court erred in imposing the gun ownership prohibition. It is not, as the court believed, statutorily required in

this case, since the personal use allegation was dismissed and the minor was adjudicated to have committed only second degree robbery.

DISPOSITION

Probation condition No. 12 set forth in the juvenile court's order dated January 8, 2020, is modified to delete the final provision prohibiting the minor "from owning or possessing a firearm until the age of 30 years pursuant to Penal Code 29820(b)." As modified, the order is AFFIRMED.

Banke, J.

We concur:

Humes, P.J.

Sanchez, J.

A159533, In re RJ